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March 2, 1999

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0870

MAR - 2 PM 12:44
RECORDING

Re: Docket No. 971660-EI

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and fifteen copies of Florida Industrial Power Users Group's Response to Florida Power & Light Company's Motion to Dismiss in the above docket.

Please acknowledge receipt of the above on the extra copy enclosed herein and return it to me. Thank you for your assistance.

Sincerely,

ACK _____
AFA *Vicki Gordon Kaufman*
APP _____
CAF _____
CMU _____

Encls. _____
CTR _____

EAG 1
LEG 1
LIR 5

OTD _____
RUI _____
SEC 1
WAS _____
OTH _____

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DOCUMENT NUMBER-DATE
02653 MAR-2 99

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: 1997 Depreciation Study by)
 Florida Power & Light Company.)
 _____)

Docket No. 971660-EI

Filed: March 2, 1999

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
RESPONSE TO MOTION TO DISMISS**

The Florida Industrial Power Users Group (FIPUG) files its response in opposition to Florida Power & Light Company's (FPL) motion to dismiss. FPL's motion is without merit and should be denied.

FPL makes two claims in regard to FIPUG's protest of Order No. PSC-99-0073-FOF-EI. First, FPL claims that FIPUG has not meet the test for association standing. However, the cases on which FPL attempts to rely demonstrate that associations can represent their members before state agencies. FIPUG has been appearing in FPL proceedings before the Commission on behalf of its affected members for over twenty years. Until the FPL ROE case (Docket No.981390-EI) and this case, FIPUG's standing to represent its members has never been questioned. FPL's attempt to do so now is nothing more than a delaying tactic and a waste of the parties' and the Commission's time and resources.

When FPL made the same argument as to FIPUG's standing in Docket No. 981390-EI, Staff made the appropriate analysis which is equally applicable here:

Staff believes that each protest has met this [the case law] standard. To the extent that a substantial number of its members are FPL customers, which each petition has satisfactorily alleged, their substantial interests are affected. It cannot reasonably be argued that any one of these associations does not have, within its general scope of interests and activities, matters which impact the regulated earnings of monopoly retail electric utilities. Further FPL has made no showing that the relief requested is inappropriate for an association to receive on behalf of its members. Therefore, this argument in FPL's Motion to Dismiss is without merit.

Staff Recommendation, p. 8. It is similarly without merit in this instance.

DOCUMENT NUMBER-DATE

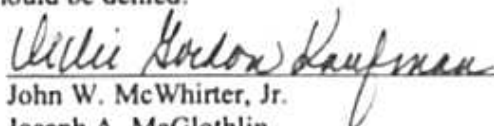
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FILED - FPL/CAS/REPORTING

Further, there is an important reason for allowing associations to participate in proceedings before the Commission because it is an attempt to level the playing field. FPL collects money from customers to pay its attorneys, experts and internal analysts to develop and present its positions to the Commission, even though these positions may be adverse to consumers' interests. FPL's customer-funded war chest enables it to combat and crush dissenters at every quarter. Single customers seeking relief can be readily overwhelmed in such an unequal contest. Associations provide a mechanism by which substantially affected customers can pool their resources to present a credible, if modest, case for the common good.

Second, FPL contends that FIPUG has failed to establish that its substantial interests will be affected in this proceeding pursuant to *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2d DCA 1981). However, FIPUG clearly alleged that it represents industrial customers of FPL and that "[t]he cost of electricity constitutes one of FIPUG's members' largest variable costs." Any docket which determines the amount and manner of recording depreciation expenses will concern FIPUG's substantial interests.

WHEREFORE, FPL's motion to dismiss should be denied.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the **Florida Industrial Power Users Group's** foregoing **Response to Motion to Dismiss** has been furnished by hand delivery (*) or by U.S. Mail to the following parties of record this **2nd** day of **March, 1999**:

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